SUPREME COURT DECISION
No. 1686

In the Supreme Court of the State of Nevada.

Appealed from 1st. Judicial District Court, Lyon County.

C. F. Fox, Plaintiff & Respondent.

vs.

Mrs. Harriet Benard as executrix of the last will and testament of William M. Bernard, deceased, Mrs. Harriet Orth and J. C. Orth, Defendants and Appellants.

G. E. Mack and Geo. D. Pyne, Attys. for Respondent. ... ...

John Lothrops and A. Chartz, for Appellants.

Decision

On February 18, 1893, the plaintiff loaned $400 to William Bernard, now deceased, and to secure the payment thereof he deeded to plaintiff on that day the lands described in the complaint, and at the same time plaintiff executed to him a bond for a deed whereby he agreed to re-convey the property on or before February 18, 1898, provided that he was paid on or before that date $400, and also $36 annually. On February 8, 1896 plaintiff loaned Bernard the additional sum of $600 and accepted as security for $1000, and interest a deed made to plaintiff at the time the $400 was borrowed, and by release made in writing acknowledged and recorded, Bernard then relieved him from all obligations resulting from the bond made February 18, 1893, and thereupon plaintiff executed to Bernard a new bond, dated February 8, 1896, conditioned that plaintiff would make and deliver a good and sufficient conveyance of the property to Bernard, provided Plaintiff was paid $1000 on or before January 1, 1900 and also $80 annually, and further provisioned that if Bernard paid these amounts and the taxes he would be entitled to the use and possession of the premises A receipt and the statement or admission of Bernard a short time before his death indicate that the only payments were on interest to the 8th. day of February 1897. He died the following year and letters testamentary were issued to his widow Mrs. Harriet Bernard who has since married C. J. Orth. Plaintiff's demand arising out of the above transactions was presented against the estate and by her as executrix was rejected on August 29, 1898. There is testimony indicating that she had previously recognized the demand by endeavoring to borrow money for its payment. On July 24, 1901 the property was set over to her by decree of distribution. From a judgment decreeing the deed to plaintiff to be a mortgage and ordering a foreclosure and sale of the premises to satisfy the amount, $1731.25 and $76.40 costs, found due to plaintiff, she appeals.

The well settled doctrine that a deed executed merely for the purpose of securing a debt will be construed as a mortgage is not assailed, but for appellant it is contended that as suit was not brought until April, 1904, more than six years after the last loan and the giving of the last bond on February 8, 1896, and more than four years after the time, January 1, 1900 fixed for a conveyance thereunder conditioned on payment, the action is barred by the statute of limitations. It is said that by executing a written release of the first bond and accepting a new one instead, at the time he borrowed the last amount, $600, Bernard did not sign any writing agreeing to pay or acknowledging a debt, and that therefore the obligation to pay on his part was merely verbal and would be barred in four years. We do not so view that transaction. Most instrument in daily use, such as deeds mortgages, notes, orders, drafts and checks are signed by only one of the parties,but are not for that reason verbal nor half verbal. Although Bernard executed no note or writing agreeing to pay any money, he signed a deed absolute in terms conveying the property to plaintiff, and by this suit and the decree no more is sought than he under his signature obligated himself to yield. In equity the extension of the time for a reconveyance by plaintiff, given by the surrender of the first bond and the execution of a new one ought to be considered as effective as if plaintiff had conveyed the property to Bernard and taken new deed from him, which would have left the title in plaintiff as it now stands. It was not necessary to have these extra deeds and if they had been executed they would not have varied the time for bringing suit and the initiation of the running of the statute which was controlled by the last bond and the date therein fixed and extended for payment and reconveyance.

Plaintiff is fortified with a writing for all that is awarded him by the judgment and for more if the property is worth more.

The loan and giving of the security which vary the unconditional terms of the deed, and which are shown verbally, are facts favorable to appellant which it would have been incumbent upon her to prove if plaintiff had sued in ejectment for the property and introduced the deed. The bringing of the action four years and four months after January 1, 1900, the time fixed in the last bond for a reconveyance conditioned on payment, was not too late.

It is also urged that suit was not begun within the time required by the provisions of the Probate Act after the rejection of the claim by the executrix. Whether this is so is immaterial for although she as executrix is named as a party defendant, the allegations of the complaint and the decree may be considered as running against the property only. No judgment for any deficiency after sale or otherwise against the estate is demanded or given by the decree, which is directed only against the premises and plaintiff's rights to this extent would not be curtailed nor affected by failure to present a claim to the executrix, nor by her rejection of the claim filed, nor by his omission to sue within the time prescribed for commencing actions on rejected claims against estates of deceased persons, as is necessary when it is desired to reach the assets of the estate.

In Cookes V. Culberston, 9 Nev. 207, as here, a deed was given as security for a loan which was not evidenced in writing. It was said in the opinion "The remedy upon the debt is barred by the statute, but the debt was not thereby extinguished; and as the statute of limitations of this State applies to suits in equity as well as actions at law, the creditors could have enforced payment by foreclosure of the mortgage within four years after the cause of action accrued He had two remedies, one upon the debt, the other upon the mortgage; by losing one he does not necessarily lose the other." Since the rendition of the decision the time for commencing actions on written instruments has been extended from four to six years and under well recognized principles plaintiff was allowed that length of time after the date fixed for payment of the $1000 and for the termination of the bond or a re-conveyance, which was January 1, 1900. As said in Borden V. Clow, 21 Nev. 278, "It is a rule in regard to the statute of limitations that the statute begins to run when the debt is due and an action can be instituted upon it." Under the argument for appellant the four years from the final loan on February 8, 1896 to the time for payment of the $1000 under the bond on January 1, 1900, would be deducted from the six years allowed for bringing suit, and on that theory if the mtaurity of the loan had been more than six years, instead of four plaintiff's cause of action would have been barred before it accrued..

The judgment of the District Court is affirmed.

TALBOT, J.

We concur.

Fitzgerald, C. J.

Norcross, J.

Carson Cemetary Water Wards

Notice is hereby given that water has been turned on at the Cemetary and that no person in arrears will be allowed the use of water until the amounts now due are paid.

Patrons are further notified that it is the intention of the Trustees to give a six months service this season, instead of five months as heretofore, to do this prompt payment by water users will be neccessary.

April 24, 1906 GEO. W. KEITH
Secretary and Collector.

Lost

A pair of eye glasses with gold chain attached, in case. The finder will be rewarded by leaving the same at this office. tf

The Continental Will Pay Bill

New York, April 27, 1906.

Hon Samuel P. Davis,

Dear Sir:—

Our Vice-President, Mr. George E. Kline, is in San Francisco, where he is looking after our interests and organizing an adjusting bureau.

Based on information received, we have to advise you as follows:

The gross amount we have at risk in the destroyed (earthquke and fire) district is $2,669,000
From which deuct for liability reinsured 743,000
Leaving net liability $1,926,000

While this is a large sum, you will see from papers enclosed that it could be paid by the Continental without regarding the Net Surplus of over eight million dollars shown in our January, 1906 Statement.

If further information is desired, please advise, and oblige.

Yours very truly,
Henry Evans, President.

Dissolution of Partnership

The copartnership heretofore existing under the style and name of Petersen and Springmeyer, in the City of Carson, County of Ormsby, has been dissole dby mutual consent, Mr Petersen haing purchased the entire interest of C. H. Springmeyer. Mr. Petersen will pay all outstanding claims against said firm and will collect all claims due the firm.

Notice

A rumor having gone about that I had advanced the price of drugs since the recent earthquake and fire in San Francisco, I wish to state here that the report is without foundation and absolutely false in every particular.

F. J. Steinmetz.

Pecple You Like to Meet.

Are found on the through trains of the Sante Fe Route. First-class travel is attracted to first class roads. The Sante Fe Route is a first-class road.

It is one of the three largest railway systems in the world. Present mileage, 7,734 miles.

It extends from Lake Michigan to the Pacific Ocean and Gulf of Mexico, reaching with its own rails Chicago, Kansas City, Denver, Fort Worth Galveston, El Paso, Los Angeles and San Francisco.

It runs the finest and fastest transcontinental train, the California Limited.

Its meal service, managed by Mr. Fred Harvey, is the best in the world

Its track is rock ballasted and laid throughout with heavy steel rails.

On such a road as this lang distance records are frequently shattered, the latest being that of the "Scotty Special" Los Angeles to Chicago, 2,265 miles in less than 45 hours.

Every comfort and luxury desired by modern travelers.

May we sell you a ticket over the Santa Fe.

G. F. WARREN, A. T. & S. F. RY.
Salt Lake City, Utah.
Or—F. W. PRINCE, San Francisco.

ing been bribed, resisting removal from the court room by the marshal acting under an order from the bench and using abusive language, one of the defendants was sent to jail for thirty days and the other for six months. Judge Terry, who had not made any accusation against the court sought release and to be purged of the contempt by a sworn petition in which he alleged that in the transaction he did not have the slightest idea of showing any disrespect to the court. It was held that this could not avail or relieve him and it was said:

"The law imputes an intent to accomplish the natural result of one's acts, and, when those acts are of a criminal nature, it will not accept, against such implication the denial of the transgressor. No one would be safe if a denial or a wrongful or criminal intent would suffice to realese the violator from the punishment due in his offenses."

In an application for a writ of habeas corpus growing out of that case, Justice Harlan, speaking for the Supreme court of the United States said:

"We have seen that it is a settled doctrine in the jurisprudence both of England and of this country, never suposed to be in conflict with the liberty of the citizens, that for direct contempt committed in the face of the court, at least one of superior jurisdiction, the offender may in its discretion, be instantly apprehended and immediately imprisoned, without trial or issue, and without other proof than its actual knowledge of what occurred; and that according to an unbroken chain of authorities reaching back to the earliest times, such power, although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it judicial tribunals would be at the mercy of the disorderly and violent, who respect neither filed in effect accusing the court of the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them." 128 U. S. 313.

In re Wooley 21 Ky. 95, it was held that to incorporate into a petition for rehearing the statement that "Your Honors have rendered an unjust decree," and other insulting matter, is to commit in open court an act constituting a contempt on the part of the atorney; and that where the language spoken or written is of itself necessarily offensive, the disavowal of an intention to commit a contempt may tend to excuse but cannot justify the act. From a paragraph in that opinion we quote;

"An attorney may unfit himself for the practice of his profession by the manner in which he conducts himself in his intersourse with the courts. He may be honest and capable, and yet he may so conduct himself as to continually interrupt the business of the courts in which he practices; or he may by a systematic and continuous course of conduct, render it impossible for the courts to preserve their self-respect and the respect of the public and at the same time permit him to act as an officer and attorney. An attorney who thus studiously and systematically attempts to bring the tribunals of justice into public contempt is an unfit person to hold the position and exercise the privileges of an officer of those tribunals. An open notorious and public insult to the highest judicial tribunal of the State for which an attorney contumaciously refuses in any way to atone, may justify the refusal of that tribunal to recognize him in the future as one of its officers."

In re Cooper, 32 Vt. 262, the respondent was fined for ironically stating to a justice of the peace, "I think this magistrate wiser than the Supreme court." Redfield, C. J., said:

"The counsel must submit in a justice court as well as in this court, and with the same formal respect, however difficult, it may be either here or there.."

"We do not see that the relator has any alternative left him but the submission to what we no doubt regards as a misapprehension of the law, both on the part of the justice and of this court. And in that respect he is in a condition very similar to many who have failed to convince others of the soundness of their own views, or to became convinced themselves o ftheir falacy."

In Mahoney v. State, 72 N. E. 151, an attorney was fined $50 for saying "I want to see whether the court is right or not. I want to know whether I am going to be heard in this case in the interests of my client or no." and making other insolent statements. In Redman v. State 28 Ind., the judge informed counsel that a question was improper and the attorney replied: "If we cannot examine our witnesses he can stand aside." This language was deemed offensive and the court prohibited that particular attorney from examining the next witness.

In Brown v. Brown IV Ind. 727, the lawyer was taxed with the cost of the action for filing and reading a petition for divorce which was unnecessarily gross and indelicate.

In McCormick v. Sheridan, 20 P. 24, 78, Cal., "A petition for rehearing stated that 'how or why the honorable commission should have so effectually and substantially ignored and disregarded the uncontradicted testimony, we do not know. It seems that neither the transcript nor our briefs could have fallen under the commissioners observation. A more disingenious and misleading statement of the evidence could not well be made. It is substantialy untrue and unwarranted. The decision seems to us to be a traversity of the evidence." Held that counsel drafting the petition was guilty of contempt committed in the face of the court, notwithstanding a disavowal of disrespectful intention. A fine of $200 was imposed with an alternative of serving in jail.

The Chief Justice speaking for the court in State v. Morrill, 16 Ark. 310 said:

"If it was the general habit of the commuity to denounce, degrade, and disregard the decisions and judgments of the courts, no man of self-respect and just pride of reputation would remain upon the bench, and such only would become the ministers of the law as were insensible to defamation and contempt. But happily for the good order of society, men, an especially the people of this country, are generally disposed to respect and abide the decisions of the tribunals ordained by government as the common arbiters of their rights. But where isolated individuals, in violation of the better instincts of human nature, and disregardful of law and order, wontanly attempt to obstruct the course of public justice by disregarding and exciting disrespect for the decisions of its tribunals, every good citizen will point them out as proper subjects for legal animadversion.

A court must naturally look first to an enlightened and conservative bar, governed by a high sense of professional ethics and deeply sensible, as they always are, of its necessity to aid in the maintenance of public respect for its opinions."

In Somers v. Torrey, 5 Paige Ch. 61 28 Am. D. 411, it was held that the attorneyw ho put his hand to scandalous and impertinent matter stood against the complainant and one not a party to the suit, is liable to the censure of the court and chargeable with the cost of the proceedings to have it expunged from the record.

In State v. Grailhe, 1 La. Am. 183, the court held that it could not consistently with its duty receive a brief expressed in disrespectful language, and ordered the clerk to take it from the files.

Referring to the rights of courts to punish for contempt, Blackford, J., in State v. Tipton, 1 Blackf. 166, said:

"This great power is entrusted to these tribunals of justice or the support and preservation of their respectability and independence; it has existed from the earliest period to which the annals of jurisprudence extend; and, except in a few cases of party violence, it has been sanctioned and established by the experience of ages." Lord Mayor of London's case, 3 Wilson, 188; opinion of Kent, C. J., in the case of Yates, 4 Johns, 317; Johnson v. The Commonwealth 1 Bibb 598.

At page 206 of Weeks on Attorneys, 2d edition it is said:

"Language may be contemptuous, whether written or spoken; and if in the presence of the court, notice is not essential before punishment. and scandalous and insulting matter in a petition for rehearing is equivalent to the commission in open court of an act constituting a contempt. When the language is capable of explanation, and is explained, the proceedings must be discontinued; but where it is offensive and insulting per se, the disavowal of an intention to commit a contempt may tend to excuse, but cannot justify the act. From an open, notorious and public insult to a court for which an attorney contumaciously refused in any way to atone, he was fined for contempt, and his authority to practice revoked."

Other authorities in line with these we have mentioned are cited in the note to re Cary, 10 Fed. 632, and in 9 Cyc. P. 20, where it is said that contempt may be committed by inserting in pleadings, briefs, motions, arguments, petitions for rehearing or other papers filed in court insulting or contemptuous language, reflecting on the integrity of the court.

By using the objectionable language stated respondent became guilty of a contempt which no construction of the words can excuse or purge. His disclaimor of an intentional disrespect to the court may palliate but cannot justify a charge which under any explanation cannot be construed otherwise than as reflecting on the intelligence and motives of the court, and which could scarcely have been made for any other purpose unless to intimidate or improperly influence our decision.

As we have seen, attorneys have been severely punished for using language in many instances not so reprehensible, but in view of the disavowal in open court we have concluded not to impose a penalty so harsh as disbarment or suspension from practice, or fine or imprisonment.

Nor do we forget that on proscribing against the misconduct of attorneys litigants ought not to be punished or prevented from maintaining in the case all petitions, pleadings, and papers essential to the preservation and enforcement of their rights.

It is ordered that the offensive petition be stricken from the files, that respondent stand reprimanded and warned, and that he pay the costs of this proceeding.

an attempt to shield its receiver and his attorneys from an investigation of charges of gross misconduct in office and containing the statement that "We must decline to assume the functions of a grand jury, or attempt to perform the duty of the court in investigating the conduct of its officers, "was held to be contemptuous. 211 P. 519.

In re Terry, 36 Fed. 419 an extreme case, for charging the court with having **Court deemed the language contemptuous**, the said language be stricken out of his petition.

Respondent not only contended and said that he **had no intention** to be disrespectful or contemptuous, but he also earnestly contended that the language charged against him and which ing was based, was, in my opinion, contemptuous: and moved that if the he admitted having used was not disoath to 'faithfully discharge the duties of an attorney and counselor." Surely such a course as was taken in this case is not in compliance with that duty. In Friedlander v. Sumner G. & S. M. Co., 61 Cal. 117. The court said:

"If unfortunately counsel in any case shall ever so far forget himself as willfully to employ langauge manifestly disrespectful to the judge of the superior court—a thing not to be anticipated—we shall deem it our duty to treat such conduct as a contempt of this court, and to proceed accordingly: and the briefs of the case were ordered to be stricken from the files."

In U. S. v. Late Corporation of Church of Jesus Christ of Later Day Saints, language used in the petition warned, and that he pay the costs of

ANNUAL STATEMENT

Of The Continental Casualty Company Of Hammond Indiana.

General office, Chicago, Ills.

Capital (paid up) .....$	300,000	00
Assets	1,708,611	28
Liabilities, exclusive of capital and net surplus ..	1,157,641	70

Income

Premiums	2,129,749	63
Other sources	30,476	73
Total income, 1905	2,160,226	36

Expenditures

Losses	993,904	82
Dividends	16,500	00
Other expenditures ...	1,113,131	64
Total expenditures, 1905	2,123,536	45

Business 1905

Risks written	none	
Premiums	2,633,875	22
Losses incurred	1,009,644	81

Nevada Business

Risks written	none	
Premiums received	20,025	56
Losses paid	8,544	59
Losses incurred	8,634	59

A. A. SMITH, Secretary.

The Sierra Nevada mining company received $2,722.67 from leasers operating on Cedar Hill during the month of February.

SPECIAL EXCURSION FROM SAN FRANCISCO TO CITY OF MEXICO AND RETURN. DECEMBER 16th, 1905.

A select party is being organized by the Southern Pacific to leave San Francisco for Mexico City, December 16th, 1905. Train will contain fine vestibule sleepers and dining car, all the way on going trip. Time limit will be sixty days, enabling excursionists to make side trips from City of Mexico to points of interest. On return trip, stopovers will be allowed at points on the main lines of Mexican Central, Santa Fe or Southern Pacific. An excursion manager will be in charge and make all arrangements.

Round trip rate from San Francisco $80.00.

Pullman berth rate to City of Mexico, $12.00.

For further information address information Bureau, 613 Market street, San Francisco Cal.

Liberal Offer.

I beg to advise my patrons that the price of disc records (either Victor or Columbia), to take effect immediately, will be as follows until further notice:

Ten inch disks formerly 70 cents will be sold for 60 cents.

Seven inch records formerly 50c, now 35c. Take advantage of this offer.

C. W. FRIEND.

Notice to Hunters.

Notice is hereby given that any person found hunting without a permit on the premises owned by Theodore Winters, will be prosecuted. A limited number of permits will be sold at $5 for the season or 50 cents for one day.

OFFICE COUNTY AUDITOR

To the Honorable, the Board of County Commissioners, Gentlemen:

In compliance with the law, I herewith submit my quarterly report showing receipts and disbursements of Ormsby County, during the quarter ending Dec. 30, 1905.

Quarterly Report.
Ormsby County, Nevada.

Balance in County Treasury at end of last quarter	39108	77½
County license	699	15
Gaming license	1057	50
Liquor license	282	00
Fees of Co. officers	527	05
Fines in Justice Court	125	00
Rent of Co. biuliding	302	50
2nd. Inst taxes	103	43½
Slot machine license	282	00
S. A. apportionment school money	5424	48
Deliquent taxes	181	40
Cigarette license	42	30
Douglas Co., road work	18	00
Keep W. Bowen	45	00
Keep C. B. Hall	15	00
Total	45213	59½

Recapitulation

April 1st., 06. Balance cash on hand	$31277	17½
State fund	713	73½
General fund	4212	28½
Salary fund	736	64
Co. school fund	47	69
Co. school fund Dist. 1	10158	48½
Co. school fund Dist. 2	189	14
Co. shool fund Dist. 3	277	61½
Co. school fund Dist. 4	212	77
State school fund Dist. 1 ...	3859	85
State school fund Dist. 2 ...	216	18
State school fund Dist. 3	433	76
Agl. Assn fund A.	686	12½
Agl. Assn. fund B.	92	16½
Agl. Assn. fund Spcl.	1829	54
Co. school fund Dist.1 Spcl .	7390	20
Co. school fund Dist. 1 library	198	40
Co school fund Dist. 3 library	6	50
Co. school fund Dist. 4 library	6	50
Total	$31277	17½

H. B. VA NETTEN
County Treasurer.

Disbursements

General fund	4263	67
Salary fund	2560	00
County school fund	60	00
Co. school fund Dist. 1	338	65
Co. school fund Dist. 2	173	10
Co school fund Dist. 3	19	85
Co. school fund Dist. 4	122	00
State school fund Dist 1	2611	65
State school fund Dist 2	240	00
State school fund Dist 3	120	00
State school fund Dist 4	110	00
Co. school fund	60	00
Co. school fund Spcl building	6377	50
Total	16936	42

Recapitulation

Cash in Treasury January 1, 1906	39108	77½
Receipts from January 1st to March 31st 1906	9104	81½
Disbursements from January 1st to March 31st 1906.....	16936	42
Balance cash in Co. Treasury April 1st 1906	31277	17½

H. DIETERICH
County Auditor